

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





77-1336

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT COURT

UNITED STATES OF AMERICA,

Appellee,

- against -

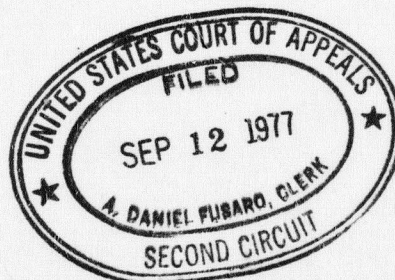
JOSEPH GAMBINO and CARLO CONTI,

Defendants-Appellants.

ON APPEAL FROM JUDGMENTS OF  
CONVICTION FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF APPELLANTS

SAXE, BACON & BOLAN, P.C.  
Attorneys for Appellants  
39 East 68th Street  
New York, New York 10021  
(212) 472-1400





PAGINATION AS IN ORIGINAL COPY

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3-9-77 Filed Papers rec'd from the U.S. Magistrates Office:  
Notice of Appearance, Pocket, Warrant for arrest executed  
3-2-77 and Memorandum and order.

3-10-77 Filed paper rec'd from the U.S. magistrate's office:  
Pocket, and Appearance Bond

3-10-77 Deft and atty pres. Deft. is to report to Pretrial services by  
telephone Monday thru Friday inclusive between 8-5. So ordered  
WARD, J.

3-10-77 Deft has until 3-24-77 to file motions. Trial set for 5-16-77  
at 10AM. So ordered WARD, J.

3-23-77 Filed Govt's Notice of Readiness for trial.

5-77 Deft's  
Filed/NOTICE OF MOTION and affidavit of Michael Rosen for an  
order dismissing Counts 1,2,3 of the indictment etc.

3-25-77 Filed Deft's MEMORANDUM OF LAW on behalf of himself.

4-12-77 Filed Govt's MEMORANDUM OF LAW in opposition to deft's demand  
for a bill of particulars and motion to dismiss counts 1,2,3 for  
failure to state a crime.

4-12-77 Filed Govt's Affidavit of Peter D. Sudler in response to deft's  
motion seeking particulars beyond that consented to by the Govt.

4-12-77 Filed MEMO-ENDORSED on deft's motion filed 3-25-77 for an order  
dismissing Cts. 1,2,& 3 of the indictment = Motion denied.  
WARD, J. m/n

4-12-77 Deft present. Pretrial conf. Gambino to be represented by Roy 3 4-12-77 E 1  
Cohn. WARD, J.

5-3-77 Filed Superseding Indictment & referred to Ward, J.  
.....Knapp, J.

5-4-77 Defts. w/a/p plead not guilty to indictment . Bail continued  
as to both defendants. Handwriting exemplar of Mr. Gambino to  
be taken. Trial still set for May 16...Ward, J.

5-9-77 Filed Govt's MEMORANDUM OF LAW re: proof required for conviction,  
the admissibility of evidence etc.

5-9-77 Filed Deft's NOTICE OF MOTION for an order dismissing Cts, 1&5  
of the indictment, etc. No ret: date.

5-10-77 Filed Govt's MEMORANDUM OF LAW - re: proof required for conviction,  
the admissibility of evidence of the victims' states of mind and  
the deft's character and reputation.

5-13-77 Filed GOVT'S MEMORANDUM OF LAW in support of dismissing certain  
counts. \_

5-13-77 Filed Memo-Endorsed on deft's motion dated 5-9-77. - Motion  
denied in all parts. So ordered WARD, J. m/n

5-11-77 Pretrial Conference held. 3 5-11 E 1

5-13-77 Pretrial Conference held. Trial adj'd to 5-24-77 @ 10 A.M. 3 5-11-77 E 1

5/23/77 Filed transcript of record of proceedings, dated 3-9-77

5-24-77 Filed Govt's Waiver of Trial by Jury. *Mr. Jerry Trial began*  
5-26-77 Filed transcript of proceedings dated 3-9-77



| DATE    | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6-10-77 | Filed ORDER that Jenny Palomelli give testimony which she refuses to give on the basis of her privilege against self incrimination. Testimony is not to be used against her. This order become effective only if said witness refuses to testify after the date of this order, WARD, J. m/n.                                                                                                                                                                                                                                                    |
| 6-10-77 | Filed ORDER that CLEMENT PALOMPELLI give testimony which she refuses to give on the basis of her privilege against self-incrimination. Testimony is not to be used against her. This order become effective only if said witness refuses to testify after the date of this order. WARD, J. m/n.                                                                                                                                                                                                                                                 |
| 6-10-77 | Filed ORDER that THOMAS PALOMPELLI give testimony which she refuses to give on the basis of her privilege against self-incrimination. Testimony is not to be used against her. This order becomes effective only if said witness refuses to testify after the date of this order, WARD, J. m/n.                                                                                                                                                                                                                                                 |
| 7-7-77  | Filed Govt's MEMORANDUM OF LAW in support of its allegation that deft's conduct violated 18 U.S.C. Sec 1951 (The Hobbs Act).                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5-25-77 | Trial Cont'd.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 5-26-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 5-27-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 5-31-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-1-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-2-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-3-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-6-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-7-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-8-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-9-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-10-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-13-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-14-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-15-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6-16-77 | Trial concluded. Court finds deft GUILTY to cts. 1 thru 4, 8 thru 9 & 11. NOT GUILTY on Cts. 5 10 & 15. No verdict reached on Cts. 12 thru 14 & 16. Bail increased to \$500,000.00. REMANDED. Motions on or before 7/11 answers by 7/18 @ 5 PM. Any reply papers by 7/20. P.S.I. ordered. Sentence date 7/21 at 9:30 AM. WARD, J.                                                                                                                                                                                                               |
| 6-27-77 | Filed PAPERS REC'D FROM U.S. Mag's office: Docket Sheet, Disposition Sheet, Appearance Bond in the sum of 250,000.00, Notice of Appearance                                                                                                                                                                                                                                                                                                                                                                                                      |
| 7-5-77  | Filed Deft's Notice of Motion for an order for a modification of the sentence imposed. Deft's Affidavit in support attached. RET: 7-7-77 @ 2:30 P.M.                                                                                                                                                                                                                                                                                                                                                                                            |
| 7-7-77  | Filed MEMO-ENDORSED on deft's motion dated 7-5-77 for a modification of sentence imposed Denied. WARD, J. m/n                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 7-11-77 | Filed Deft's NOTICE OF MOTION for an order setting aside the verdicts of guilty and entering a judgment of acquittal etc. RET. 7-21-77. Affidavit in support attached.                                                                                                                                                                                                                                                                                                                                                                          |
| 6-10-77 | For Witness: JENNY PALOMPELLI - Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The witness pay a FINE to the United States in the sum of ONE THOUSAND (\$1,000) DOLLARS and the Imposition of Sentence as to Imprisonment only is SUSPENDED and the witness is placed on unsupervised probation for a period of SIX (6) MONTHS, subject to the standing probation order of the court and it is a condition of probation that the witness pay the fine of ONE (1,000) THOUSAND DOLLARS on or before July 13, 1977. WARD, J. (all copies Issued) |
| 7-18-77 | Filed transcript of record of proceedings dated July 7, 1977                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |



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U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

FILE NO. 104 (R)

| DATE    | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7-17-77 | Filed transcript of proceedings dated July 11, 1977.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 7-18-77 | Filed transcript of proceedings dated July 14-27, 1977.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 7-19-77 | Filed transcript of proceedings dated July 18-26, 1977.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 7-20-77 | Filed Govt's MEMORANDUM IN OPPOSITION to Deft's post trial motions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 7-21-77 | Filed MEMO-ENDORSED on deft's motion of 7-11-77 for an order setting aside the guilty verdicts. - Motion denied in accordance with oral decision rendered in open court. WARD, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 7-21-77 | Filed JUDGMENT AND PROBATION/COMMITMENT ORDER -The deft is committed to the custody of the Atty Gen for impr. for a period of FIVE (5) YEARS on count 1, TEN (10) YEARS on count 2, TEN (10) YEARS on count 3, TEN (10) YEARS on count 4. Said sentences on counts 1,3 and 4 to run concurrently with each other and with sentence imposed on count 2, Imposition of prison sentence suspended on counts 6,7,9 and 11 and FINED \$10,000.00 on each count. TOTAL FINE \$50,000.00 to be paid within 30 days of the date of sentence or the final determination of any appeal, whichever is later, Deft., is placed on probation for a period of THREE (3) YEARS on each of counts, 6,7, & 9 & 11 to run concurrently with each other and to follow period of confinement. Probation shall be subject to the standing probation order of this court. In the event deft., voluntarily leaves the United States or is deported probation will be terminated. Deft., cont'd on present bail until he posts bail pending appeal fixed in the amount of \$500,00.00 on condition the appeal is promptly prosecuted. Original indictment nolledd. WARD, J. (all copies issued). |
| 7-25-77 | Deft., - Cts. 12 thru 14 & 16, dismissed by order of the court. WARD, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7-27-77 | Filed Deft's Notice of Motion to require deposit of fines or posting of bond pending appeal. RET: 8-2-77 at 2:15P.M. Affidavit of Peter D. S. attached.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 7-27-77 | Filed ORDER that THOMAS PALOMPELLI is hereby committed to the custody of the Atty Gen for a period of THREE (3) MONTHS. WARD, J. m/n                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 7-29-77 | Filed Deft's NOTICE OF APPEAL to the USCA from the order of 7-21-77. Mailed Notices to the U.S. Atty and appellant's counsel.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 8-3-77  | Filed Deft's AFFIDAVIT of Michael Rosen, in opposition to motion to require deposit of fines for posting of bond pending appeal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 8-12-77 | Filed Notice of Original Record being certified and transferred to the USCA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 8-18-77 | Filed (FOR WITNESS: THOMAS PALOMPELLI, JR.) JUDGMENT AND PROBATION/COMMITMENT ORDER -The witness hereby committed to the custody of the Atty Gen for impr. for a period of THREE (3) MONTHS. The witness is remanded. WARD, J. (all copies issued).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 8-18-77 | Filed (FOR WITNESS: CLEMENT PALOMPELLI) JUDGMENT AND PROBATION/COMMITMENT ORDER -The witness hereby committed to the custody of the Atty. Gen. for impr. for a period of THREE(3) MONTHS. Witness is to surrender on Monday, 9-19-77 at 10:30 A.M. in Courtroom 506. WARD, J. (ALL COPIES ISSUED)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 8-22-77 | FILED TRANSCRIPT OF PROCEEDINGS DTD 8/18/77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 8-22-77 | FILED TRANSCRIPT OF PROCEEDINGS DTD 8/21/77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 8-25-77 | Filed Notice of the 1st Supplemental Record being certified and transferred to the USCA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 8-31-77 | Filed transcript of proceedings dated 8-7-77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |



## ORIGINAL COUNTS —→

1

1

385

1

17-22

SUPERSEDING  
COUNTS 7

 $6.45 \times 10^{-2} \text{ g cm}^{-2} \text{ s}^{-1}$ 

3-8-77

5-24-77

6-16-77

6-16-27

2-21-77

1. *Chrysomelidae* (10) 2. *Chrysomelidae* (10) 3. *Chrysomelidae* (10) 4. *Chrysomelidae* (10) 5. *Chrysomelidae* (10) 6. *Chrysomelidae* (10) 7. *Chrysomelidae* (10) 8. *Chrysomelidae* (10) 9. *Chrysomelidae* (10) 10. *Chrysomelidae* (10)

ATTORNEYS

Benzat Schwartz

1334 E. Gun Hill Road, Bronx, N. Y. 10469  
654-5000

1944-

Filed Indictment. Ordered sealed until further order of the Court. B/W Ordered.....Frankel, J.

Filed Order that this indictment be unsealed.....Frankel, J.

Def't. (atty. Kenneth G. Schwartz present) pleads not guilty.  
Def't. continued released on \$50,000 surety. Case assigned  
to Ward, J. for all purposes..... Edelstein, J.

Filed notice of appearance of Kenneth G. Schwartz as attorney  
for deft.

Filed Papers rec'd from the U.S. Magistrate's Office:  
Notice of Appearance, Appearance Bond and docket.

Left home until 3-24-77 to file motions. Trial set for 5-16-77 at 10AM. So ordered WARE, J.

filed Govt's Notice of readiness for trial.

Filed MEMO-ENDORSED on deft's motion filed 3-25-77 for an order  
dismissing Cts. 1, 2 & 3 of the indictment. - Motion denied.  
WARD, J. m/n



|         |                                                                                                                                                                                                                                                                                                |   |         |   |   |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------|---|---|
| 4-12-77 | Filed Deft present. Pretrial conference held. Court grants application for Kenneth Schwarz to be relieved as attorney for this left. Ward, J.                                                                                                                                                  | 3 | 4-12-77 | E | 1 |
| 5-3-77  | Filed Superseding Indictment & referred to Ward, J.<br>.....Knapp, J.                                                                                                                                                                                                                          |   |         |   |   |
| 5-4-77  | Defts. w/a/p plead NOT GUILTY to indictment. Bail continued as to both defendants Handwriting exemplar of Mr. Gubino to be taken. Trial still set for May 16...Ward, J.                                                                                                                        |   |         |   |   |
| 5-9-77  | Filed Govt's MEMORANDUM OF LAW re: proof required for conviction, the admissibility of evidence etc.                                                                                                                                                                                           |   |         |   |   |
| 5-10-77 | Filed Govt's MEMORANDUM OF LAW - re; proof required for conviction, the admissibility of evidence of the victims' states of mind and the deft's character and reputation.                                                                                                                      |   |         |   |   |
| 5-13-77 | Filed GOVT'S MEMORANDUM OF LAW in support of dismissing certain counts.                                                                                                                                                                                                                        |   |         |   |   |
| 5-11-77 | Pretrial Conference held.                                                                                                                                                                                                                                                                      | 3 | 5-11    | E | 1 |
| 5-13-77 | Pretrial Conference held. Trial adjourned to May 24 at 10:00A.M.                                                                                                                                                                                                                               | 3 | 5-11    | E | 1 |
| 5-13-77 | Filed transcript of record of proceedings, dated 3-3-77                                                                                                                                                                                                                                        |   |         |   |   |
| 5-24-77 | Filed Govt's Waiver of Trial by Jury. Non-jury trial begun.                                                                                                                                                                                                                                    |   |         |   |   |
| 5-26-77 | Filed transcript of record of proceedings, dated 3-7-77                                                                                                                                                                                                                                        |   |         |   |   |
| 6-10-77 | Filed ORDER that Jenny Palompelli give testimony which she refuses to give on the basis of her privilege against self-incrimination. Testimony is not to be used against her, This order becomes effective only if said witness refuses to testify after the date of this order, WARD, J. m/n. |   |         |   |   |
| 6-10-77 | Filed ORDER that CLEMENT PALOMPELLI give testimony which he refuses to give on the basis of his privilege against self-incrimination. Testimony is not to be used against her, This order become effective only if said witnessrefuses to testify after the date of this order, WARD, J. m/n   |   |         |   |   |
| 6-10-77 | Filed ORDER that Thomas Palompelli give testimony which he refuses to give on the basis of his privilege against self-incrimination. Testimony is not to be used against him. This order becomes effective only if said witness refuses to testify after the date of the order. WARD, J. /m/n  |   |         |   |   |
| 6-17-77 | Filed Govt's MEMORANDUM OF LAW in support of its allegation that deft's conduct violated 18 U.S.C, Sec 1951 (The Hobbs Act)                                                                                                                                                                    |   |         |   |   |
| 5-25-77 | Trial cont'd.                                                                                                                                                                                                                                                                                  |   |         |   |   |
| 5-26-77 | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 5-27-77 | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 5-31-77 | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 6-1-77  | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 6-2-77  | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 6-3-77  | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 6-6-77  | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |
| 6-7-77  | " "                                                                                                                                                                                                                                                                                            |   |         |   |   |

7-13-77 J. Palompelli 1000  
7-17-77 Treas 1000  
P. J. Full



| DATE    | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6-8-77  | Trial Cont'd                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 6-9-77  | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 6-10-77 | " " Cts. 17 Thru 22 dismissed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 6-13-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 6-14-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 6-15-77 | " "                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 6-16-77 | " concluded. Court finds deft guilty on Cts. 1 thru 5. BAIL increased to \$250,000.00 REMANDED. Motions on or before 7-11-77 answers by 7-18-77 by 5 P.M. Any reply papers by 7-20-77. P.S.I. ordered. Sentence date 7-21-77 at 9:30 A.M. both defts. WARD, J.                                                                                                                                                                                                                                                                                       |
| 6-27-77 | Filed Papers rec'd from the U.S. Mag's Office: Docket Sheet, Appearance Bond, and Appearance Bond in the sum of \$200,000.00.                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 7-7-77  | Filed MEMO-ENDORSED on deft's motion dated 7-5-77 for a modification of sentence imposed. DENIED. WARD, J. m/n                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 7-11-77 | Filed Deft's NOTICE OF MOTION for an order setting aside the verdicts of guilty and entering a judgment of acquittal etc. SET: 7-21-77. Affidavit in support attached.                                                                                                                                                                                                                                                                                                                                                                               |
| 6-10-77 | For witness: JENNY PALOMPELLI - Filed Judgment and Probation/ Commitment Order- The witness pay a Fine to the United States in the sum of ONE THOUSAND (\$1,000) DOLLARS and the Imposition of Sentence as to Imprisonment only is SUSPENDED and the witness is placed on unsupervised probation for a period of SIX (6) MONTHS, subject to the standing probation order of this court, and it is a condition of probation that the witness pay the fine of ONE THOUSAND (\$1,000) DOLLARS on or before July 13, 1977. WARD, J. (all copies issued). |
| 7-18-77 | Filed transcript of record of proceedings, dated <i>June 7-18-13, 1977</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 7-22-77 | Filed transcript of record of proceedings, dated <i>Aug. 24-30, 1977</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 7-19-77 | Filed transcript of record of proceedings, dated <i>July 31, 1977</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 7-19-77 | Filed transcript of record of proceedings, dated <i>July 14-16, 1977</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 7-20-77 | Filed Govt's MEMORANDUM IN OPPOSITION to deft's post-trial motions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 7-21-77 | Filed MEMO ENDORSED on deft's motion of 7-11-77 for an order setting aside the guilty verdicts. - Motion denied in accordance with oral decision rendered in open court. WARD, J. m/n.                                                                                                                                                                                                                                                                                                                                                               |
| 7-21-77 | Filed JUDGMENT AND PROBATION/COMMITMENT ORDER The Deft., is committed to the custody of the Atty Gen. for impr. for a period of FIVE (5) YEARS on count 1, EIGHT (8) YEARS on counts 3, 4 & 5. Said sentences imposed on counts 1, 3, 4, & 5, to run concurrently with sentence imposed on count 2. Deft., cont'd on present bail until he posts bail pending appeal fixed in the amount of \$250,000.00 on condition the appeal is promptly prosecuted Original Indictment nolle. WARD, J. (all copies issued) .                                    |
| 7-27-77 | Filed ORDER that THOMAS PALOMPELLI is hereby committed to the custody of the Atty Gen for a period of THREE (3) MONTHS. WARD, J. m/n                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7-29-77 | Filed Deft's NOTICE OF APPEAL to the USCA from the Order of 7-21-77. Mailed Notices to the U.S. Atty and the appellant's counsel.                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 8-12-77 | Filed Notice of the Original record being certified and transferred to the USCA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

Cont'd on page 4



| DATE    | PROCEEDINGS                                                                                                                                                                                                                                                                                         |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8-18-77 | (For witness; THOMAS PALOMPELLI, JR. ) Filed JUDGMENT AND PROBATION/COMMITMENT ORDER. The witness hereby committed to the custody of the Atty Gen. for impr. for a period of THREE (3) MONTHS. The witness is remanded, WARD, J. ( all copies issued ).                                             |
| 8-18-77 | Filed (FOR WITNESS: CLEMENT PALOMPELLI.) JUDGMENT AND PROBATION/COMMITMENT ORDER. The witness hereby committed to the custody of the Atty. Gen. for impr for a period of THREE (3) MONTHS. Witness is to surrender on Monday, 9-19-77 at 10:30 A.M. in Courtroom 501. WARD, J. (ALL COPIES ISSUED). |
|         | <i>Transferred to the 1st Supplemental Record Book dated 7-7-77</i>                                                                                                                                                                                                                                 |
| 8-25-77 | Filed Notice of the 1st Supplemental Record Book, Certified and Transferred to the 1st Supplemental Record Book dated 7-7-77.                                                                                                                                                                       |
| 8-27-77 | Transferred to the 1st Supplemental Record Book dated 7-7-77.                                                                                                                                                                                                                                       |



United States District Court for

JOSEPH CHAMBERLAIN

DOCKET NO.

| MONTH | DAY | YEAR |
|-------|-----|------|
| 02    | 01  | 2000 |

☐ WITHOUT COUNSEL

2 WITH COUNSEL

L27-1608-19

(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE.

☐ NOT GUILTY

There being a finding/finding of

☐ NOT GUILTY. Defendant is discharged  
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy, knowingly and unlawfully aiding together with others to violate Section 8(a)(1) and (2) (18 U.S.C., Sec. 371); unlawfully, knowingly and intentionally obstruct Section 8(a), 2001 and 2003(c); and unlawfully, knowingly and intentionally obstruct and cause a large part of the business and financial affairs of America. (18 U.S.C., Sec. 2383)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient excuse to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant be hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

(9) YEARS on count 1; and (10) YEARS on count 2; and (11) YEARS on count 3; and (12) YEARS on count 4. Said sentences on counts 1,3 and 4 to run concurrently with each other and with sentences imposed on count 2.

Original indictment recalled.



ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out in the Appendix of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and may fine, suspend, or revoke probation at any time. The Court may also extend the probation period of two years permitted by law, may issue a warrant and may revoke probation at any time during the probation period.

The Court orders commitment to the custody of the Attorney General as recommended.

COMMITMENT  
RECOMMENDATION  
DATE

It is ordered that the clerk deliver a certified copy of this judgment and commitment to the Attorney General or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

*Robert A. Ward*  
U.S. District Judge

Date

*4/11/72*

CERTIFIED AS A TRUE COPY ON

THIS DATE *4/11/72*

BY

*Ursula Krueger*

(CLERK)  
(CLERK)



United States of America vs.

United States District Court for

the Southern District of New York

DEFENDANT

CARLO CONTI

DOCKET NO. 1877 Cr. 103

JUDGMENT AND PROBATION/CORRECTIONAL INSTITUTION

In the presence of the attorney for the government  
the defendant appeared in person on this date

| MONTH | DAY | YEAR |
|-------|-----|------|
| 7     | 21  | '77  |

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Michael Rosen, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/judgment of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly conspiring together with others to violate Sec. 894, 1951 and 1962(b) of T. 18, U.S.C. (T. 18, U.S.C., Sec. 371); unlawfully, wilfully and knowingly violating T. 18, U.S.C., Secs. 894, 1951 and 1962(b).

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of:

(5) YEARS on count 1; EIGHT (8) YEARS on count 2; EIGHT (8) YEARS on counts 3, 4 and 5. Said sentences imposed on counts 1, 3, 4 and 5 to run concurrently with sentence imposed on count 2.

Defendant continued on present bail until he posts bail pending appeal. Said in the amount of \$250,000.00 on condition the appeal is promptly prosecuted.

Original indictment nolle.

SPECIAL  
CONDITIONS  
OF  
PROBATION

ADDITIONAL  
CONDITIONS  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse of this order be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period may revoke or suspend probation or extend the probation period of the year, as permitted by law, may issue warrants and arrests, probation, and non-arresting during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT TO  
CUSTODY  
RECOMMENDATION

MICROFILM  
JUL 22 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

*Robert J. Ward*  
ROBERT J. WARD

Date 7/27/77

24A





## UNITED STATES DISTRICT COURT

EAST DISTRICT OF NEW YORK

UNITED STATES

Docket Number

77 Cr. 164

JOSEPH GAMBINO

ROBERT J. WHEO  
(District Court Judge)

CARLO CONTI

## NOTICE OF APPEAL

Notice is hereby given that

Joseph Gambino

appeals

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other

(specify) \_\_\_\_\_ entered in this action on

July 21, 1977

(Date)

Date

7/21/77

To:

ROBERT J. WHEO, JR.  
U.S. Attorney  
S.D.N.Y.

Address

Sals Puccino-Baker, P.C.  
(Counsel for Appellant)  
39 East 68th Street  
New York, New York 10021

Phone Number

471-1400

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

## QUESTIONNAIRE

☒ I am ordering a transcript☒ I am not ordering a transcript

Reason:

☒ Daily copy is available☐ U.S. Attorney has placed order☐ Other. Attach explanation

## TRANSCRIPT ORDER

Prepare transcript of

☐ Pre-trial proceedings☒ Trial☐ Sentence☐ Post-trial proceedingsDESCRIPTION OF PROCEEDINGS  
FOR WHICH TRANSCRIPT IS  
REQUIRED (INCLUDE DATE)The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

July 29, 1977

## COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and  
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number  
of pages.

Date

Signature

(Court Reporter)

ORIGINAL



## UNITED STATES DISTRICT COURT

Docket Number

776-114

ROBERT J. WARD  
(District Court Judge)JOSEPH G. MURPHY  
CARLO CONTI

## NOTICE OF APPEAL

Notice is hereby given that

CARLO CONTI

appeals to

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order(specify) entered in this action on July 21, 1977  
(Date)

Date

To:

ROBERT A. FRANK, JR.  
U.S. Attorney  
S.D.N.Y.

Address

S. J. P. & Bolan, P.C.  
(Counsel for Appellant)  
39 East 68th Street  
NY NY 10021

Phone Number

472-1800

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

## QUESTIONNAIRE

- ☐ I am ordering a transcript  
☒ I am not ordering a transcript

Reason:

- ☐ Daily copy is available  
☐ U.S. Attorney has placed order  
☐ Other. Attach explanation

## TRANSCRIPT ORDER

- Prepare transcript of  
☐ Pre-trial proceedings  
☐ Trial  
☐ Sentence  
☐ Post-trial proceedings

☒ DESCRIPTION OF PROCEEDINGS  
 FOR WHICH TRANSCRIPT IS  
 REQUIRED (INCLUDE DATE).

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☐ Funds ☐ GJA Form 21

ATTORNEY'S signature

DATE

July 29, 1977

## COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number of pages.

Date

Signature

(Court Reporter)

ORIGINAL



- - - - - x

UNITED STATES OF AMERICA :

-v- :

JOSEPH GAMBINO and :  
CARLO CONTE, :

Defendants. :

- - - - - x

INTRODUCTION

The Grand Jury charges:

1. From 1968 through 1975, Peter Darminio and Anthony Darminio were the owners and operators of Terminal Sanitation, and its successor corporation, Terminal Sanitation, Inc. (hereinafter collectively referred to as "Terminal Sanitation"), which at all relevant times, was a licensed private sanitation firm engaged in the business of waste, rubbish and garbage removal, with offices located in the Bronx, New York.

2. At all times relevant to this Indictment, Terminal Sanitation was an enterprise which was engaged in and the activities of which affected interstate commerce.

3. During the years 1970 and 1971, the defendant CARLO CONTE was an officer of Yellow Bird Carting, Inc., an unlicensed private sanitation firm controlled by the defendants JOSEPH GAMBINO and CARLO CONTE, which was engaged in the business of waste, rubbish and garbage removal, with offices located in the Bronx, New York.

4. During the years 1972 through 1975, the defendants JOSEPH GAMBINO and CARLO CONTE owned or controlled Blue Grass Carting Corp., and Country Club Carting Corp.,



both of which entities were formed for the purpose of waste, rubbish and garbage removal, and which companies had offices located in the Bronx, New York.

5. During the years 1975 up to and including the date of filing of this indictment, the defendants JOSEPH GAMBINO and CARLO CONTE owned and controlled P. & S. Sanitation Corp., a private sanitation firm which was engaged in the business of waste, rubbish and garbage removal, with offices located in the Bronx, New York.

6. From in and around the month of December 1976, up to and including the date of filing of this indictment, American Automated Refuse and Wastepaper Removal, Inc., (hereinafter referred to as "American Automated") was a licensed private sanitation firm engaged in the business of waste, rubbish and garbage removal, with offices located in the Bronx, New York.

7. At all times referred to herein, American Automated was an enterprise which was engaged in and the activities of which affected interstate commerce.

8. Each and every allegation contained in this introduction is hereby repeated, recalled and incorporated by reference in Counts One through Twenty-two of this indictment as though fully set forth therein.

#### COUNT ONE

The Grand Jury further charges:

9. From on or about January 1, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York, the defendants JOSEPH GAMBINO and CARLO CONTE, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with persons to the Grand Jury unknown, to violate Sections 804, 1031, 1952(b) and 1952(c), Title 18



United States Code, and to (a) acquire and maintain, directly and indirectly, through a pattern of racketeering activities, by means of extortion and through the collection of unlawful debts, an interest in and control of Terminal Sanitation, an enterprise, defined in paragraph 1 of this Indictment which was engaged in and the activities of which affected interstate commerce; (b) acquire and maintain, directly and indirectly, through a pattern of racketeering activities, by means of extortion and through the collection of unlawful debts, an interest in and control of the business assets and contractual rights of Terminal Sanitation, including among other things, stops of customers for whom Terminal Sanitation had performed garbage collection services; (c) acquire and maintain, directly and indirectly, through a pattern of racketeering activities, by means of extortion and through the collection of unlawful debts, control of refuse, waste, rubbish and garbage removal in the Co-op City area and other areas of the Bronx, New York; and (d) to conduct and participate directly and indirectly, in the conduct of the affairs of P. & S. Sanitation Corp., a company described in paragraph 5 of this Indictment, through a pattern of racketeering activities, including extortion, all in violation of Title 18, United States Code, Section 371.

10. It was a part of said conspiracy that the defendants JOSEPH GAMBINO and CARLO CONTI unlawfully, wilfully and knowingly would and did obstruct, delay and affect and attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, to wit, the movement of waste, rubbish and garbage from the State of New York to the State of New Jersey, by means of



extortion, in that the defendants would and did obtain monthly payments of cash from Terminal Sanitation, Peter Darminio and Anthony Darminio, with their consent, such payments having been induced by the wrongful use of actual and threatened force, violence and fear.

11. It was further a part of said conspiracy that the defendants JOSEPH GAMBINO and CARLO CONTI unlawfully, wilfully and knowingly would and did use extortionate means, that is, the use and the express and implicit threat of use of violence and other criminal means to cause harm to the person, reputation and property of Peter Darminio in order to collect and attempt to collect extensions of credit from the said Peter Darminio and to punish the said Peter Darminio for the non-repayment thereof.

12. It was further a part of said conspiracy that the defendants JOSEPH GAMBINO and CARLO CONTI unlawfully, wilfully and knowingly would and did obstruct delay and affect and attempt to obstruct, delay and affect commerce, to wit, the movement of waste, rubbish and garbage from the State of New York to the State of New Jersey, by means of extortion, in that the defendants would and did induce American Automated and persons associated therewith to cease doing business with Harry's Service Station, Inc. by the wrongful use of actual and threatened force, violence and fear.

13. It was further a part of said conspiracy that the defendants JOSEPH GAMBINO and CARLO CONTI, unlawfully, wilfully and knowingly would and did through a pattern of racketeering activity, that is through acts and threats involving extortion and extortionate credit transactions and through the collection of unlawful debts, acquire and maintain,



directly and indirectly, an interest and control of Terminal Sanitation, an enterprise which was engaged in and the activities of which affected interstate commerce.

14. It was further a part of said conspiracy that the defendants JOSEPH GAMBINO and CARLO CONTI, being persons employed by and associated with P. & S. Sanitation Corp., an enterprise engaged in, and the activities of which affect interstate commerce, unlawfully, wilfully and knowingly did conduct and participate, directly and indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity, that is extortion.

15. It was further a part of said conspiracy that the defendants JOSEPH GAMBINO and CARLO CONTI unlawfully, wilfully and knowingly would and did obstruct, delay and affect and attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, in that they would and did maintain and attempt to maintain control of garbage removal in the Co-op City area of the Bronx, New York and in other areas of the Bronx, New York by means of extortion, that is the wrongful use of actual and threatened force, violence and fear.

#### MEANS OF THE CONSPIRACY

16. Among the means whereby the defendants would and did accomplish the objects set forth in paragraphs 9 through 15 above, were the following:

(a) The defendants JOSEPH GAMBINO and CARLO CONTI would and did arrange to have Peter Darminio, Anthony Darminio and Terminal Sanitation service certain garbage collection stops in the area of Co-op City, Bronx, New York, which stops had theretofore been serviced by Yellow Bird



Carting, Inc., an unlicensed private sanitation firm which was controlled by JOSEPH GAMBINO and CARLO CONTI.

(b) The defendants JOSEPH GAMBINO and CARLO CONTI would and did instruct Peter Darminio and Anthony Darminio that Terminal Sanitation was to remit to the defendant JOSEPH GAMBINO one-third of all proceeds received from servicing the Co-op City garbage collection stops by Terminal Sanitation on behalf of Yellow Bird Carting, Inc. 1/3

(c) The defendants JOSEPH GAMBINO and CARLO CONTI would and did cause Peter Darminio, Anthony Darminio and Terminal Sanitation to make large cash payments to the said defendants on or about the twentieth day of each month during the period from 1970 through and including 1975. Beginning with the year 1972 through and including 1975 these cash payments were made on a monthly basis and exceeded \$4,000.00.

(d) The defendants JOSEPH GAMBINO and CARLO CONTI during the period 1970 through 1975 when Peter Darminio and Anthony Darminio were not able to make the monthly cash payments set forth in paragraph (c) above, would and did force Terminal Sanitation to sell to other private sanitation firms controlled by the defendants JOSEPH GAMBINO and CARLO and others, certain of Terminal's garbage collection stops. The forced successive sales of these garbage collection stops eventually resulted in the demise of Terminal Sanitation as a business entity when in November of 1975 Terminal Sanitation relinquished all of its remaining garbage collection stops in the Co-op City area of the Bronx, New York to P. & S. Sanitation Corp., a private sanitation firm owned and controlled by the defendants, JOSEPH GAMBINO and CARLO CONTI.



(e) The defendants JOSEPH GAMBINO and CARLO CONTI would and did use and cause to be used physical violence and threats of physical violence to the person, reputation, and property of Peter Darminio to collect from the said Peter Darminio a loan of \$75,000.00 and \$70,000.00 interest thereon from the defendant JOSEPH GAMBINO to the said Peter Darminio.

(f) The defendants JOSEPH GAMBINO and CARLO CONTI would and did receive the sum of \$1,250.00 from said Peter Darminio, each week beginning on September 4, 1972 until March 1974, when the defendant JOSEPH GAMBINO demanded and received the immediate payment of the total sum of \$45,000.00 which constituted the remaining principal and interest on the original \$75,000.00 loan.

(g) The defendants JOSEPH GAMBINO and CARLO CONTI would and did use and cause to be used physical violence and threats of physical violence against persons associated with American Automated in order to prevent the said American Automated from soliciting and servicing the garbage collection business of Harry's Service Station, Inc., 1000 Baychester Avenue, Bronx, New York, which collection business was then a stop of P. & S. Sanitation Corp., which P. & S. Sanitation Corp. had acquired from Terminal Sanitation as set forth in paragraph 16(d) above.

#### OVERT ACTS OF THE CONSPIRACY

17. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by the defendants in the Southern District of New York and elsewhere:



(a) During the year 1970, the defendant JOSEPH GAMBINO instructed Peter Darminio to have Terminal Sanitation enter into a sham agreement with Yellow Bird Carting, Inc., whereby Terminal Sanitation would purchase garbage collection stops in the Co-op City area of the Bronx, New York which stops had previously been serviced by Yellow Bird Carting, Inc.

(b) In or about April 1971, the defendant CARLO CONTI on behalf of Yellow Bird Carting, Inc. entered into a sham agreement with Terminal Sanitation whereby Terminal Sanitation agreed to purchase certain garbage collection stops in the Co-op City area of the Bronx, New York.

(c) From the year 1970 through the year 1975, the defendants JOSEPH GAMBINO and CARLO CONTI would and did receive on or about the twentieth day of each month large cash payments, which payments reflected one-third of the receipts collected from the Co-op City stops being serviced by Terminal Sanitation. Beginning with the year 1972 these monthly cash payments exceeded the sum of \$4,000.00.

(d) From the year 1970 through the year 1975, the defendants JOSEPH GAMBINO and CARLO CONTI would and did threaten and cause physical and economic injury to Peter Darminio, Anthony Darminio, and Terminal Sanitation, when the monthly cash payments referred to in overt act (c) above were not forthcoming.

(e) In or about February 1972, the defendant JOSEPH GAMBINO signed a contract on behalf of Blue Grass Carting Corp., with Terminal Sanitation, and caused Terminal to sign said contract in which agreement Terminal Sanitation agreed to sell certain of its garbage collection stops in



9.

the Co-op City area of the Bronx to the said Blue Grass Carting Corp.

(f) In or about April 1973, the defendant JOSEPH GAMBINO directed and caused Peter Darminio, Anthony Darminio and Terminal Sanitation to enter into an agreement with Country Club Carting Corp. whereby Terminal Sanitation would sell certain of its garbage collection stops in the Co-op City area of the Bronx to the said Country Club Carting Corp.

(g) In or about November 1975, the defendant JOSEPH GAMBINO directed and caused Peter Darminio, Anthony Darminio and Terminal Sanitation to enter into an agreement with P. & S. Sanitation Corp. whereby Terminal Sanitation would sell certain of its garbage collection stops in the Co-op City area of the Bronx to the said P. & S. Sanitation Corp.

(h) In or about August 1972, the defendant JOSEPH GAMBINO loaned \$75,000.00 to Peter Darminio with the provision that the said Peter Darminio would repay the \$75,000.00 principal as well as \$70,000.00 in interest.

(i) From on or about September 1972 up to and including March 5, 1974, the defendants JOSEPH GAMBINO and CARLO CONTI received weekly cash payments of \$1,250.00 from Peter Darminio on the \$75,000.00 loan.

(j) In or about March 1974, the defendant JOSEPH GAMBINO demanded and received payment of the remaining \$45,000.00 owed to him by Peter Darminio on the \$75,000.00 loan.



(k) During the period from September 1972 through March 1974, the defendant CARLO CONTI threatened and assaulted Peter Darminio on occasions when Peter Darminio was unable to meet the weekly loan payment of \$1,250.00.

(l) On December 15, 1976 the defendant CARLO CONTI had a conversation with persons associated with American Automated, Inc., during which conversation the defendant CARLO CONTI threatened violence and physically assaulted said persons.

(Title 18, United States Code, Section 371).

COUNT TWO

1462(b) - original/modified

The Grand Jury further charges:

18. Each and every allegation contained in paragraphs nine through seventeen of this Indictment is hereby repeated, realleged and incorporated by reference herein as though fully set forth.

19. From on or about January 1, 1970 up to and including the date of filing of this indictment, in the Southern District of New York, the defendants JOSEPH GAMBINO and CARLO CONTI, unlawfully, wilfully and knowingly, through a pattern of racketeering activity and through the collection of unlawful debts, would and did acquire and maintain, directly and indirectly, an interest in and control of Terminal Sanitation, an enterprise which was engaged in and the activities of which affected interstate commerce and an interest in and control of the business assets and contractual rights of Terminal Sanitation, including among other things, all customers for whom Terminal Sanitation had performed garbage collection services.

(Title 18, United States Code, Sections 1962(b) and 2)



COUNT THREE 19.51 H-212

The Grand Jury further charges:

20. Each and every allegation contained in paragraphs nine through seventeen of this Indictment is hereby repeated, realleged and incorporated by reference herein as though fully set forth.

21. From on or about March 1, 1972, through and including December 1975, in the Southern District of New York the defendants JOSEPH GAMBINO and CARLO CONTI, unlawfully, wilfully and knowingly would and did cause physical violence and economic injury and would and did threaten physical violence and economic injury to persons and property in furtherance of a plan and purpose to obstruct, delay and affect, and attempt to obstruct, delay and affect the movement of articles and commodities in commerce, to wit, the movement of waste, rubbish and garbage from the State of New York to the State of New Jersey, in connection with the business of Terminal Sanitation, by means of extortion, in that the defendants would and did obtain monthly payments of money from Peter Darminio, Anthony Darminio and Terminal Sanitation, with their consent, such consent having been induced by the wrongful use of actual and threatened force, violence and fear.

(Title 18, United States Code, Sections 1951 and 2)

COUNT FOUR 8614

The Grand Jury further charges:

22. Each and every allegation contained in paragraphs nine through seventeen of this Indictment is hereby repeated, realleged and incorporated by reference herein as though fully set forth.



23. From on or about August 1, 1972 up to and including April 1, 1974, in the Southern District of New York, the defendants JOSEPH GAMBINO and CARLO CONTI, unlawfully, wilfully and knowingly did use extortionate means, to wit, the use of violence, and express and implicit threats of the use of violence and other criminal means to cause harm to the person, reputation and property of Peter Darminio in order to collect and attempt to collect extensions of credit from the said Peter Darminio and to punish the said Peter Darminio for the non-repayment thereof.

(Title 18, United States Code, Sections 894 and 2)

COUNT FIVE *Amended*

The Grand Jury further charges:

24. Each and every allegation contained in paragraphs nine through fifteen of this indictment is hereby repeated, realleged and incorporated by reference herein as though fully set forth at length.

25. From September 1972 up to and including 1975, Harry's Service Station, Inc., 1000 Baychester Avenue, Bronx, New York, was one of the garbage collection stops being serviced by Terminal Sanitation.

26. During the years 1976 up to and including the date of filing of this indictment, Harry's Service Station, Inc., was serviced by P. & S. Sanitation Corp., a private sanitation firm owned and controlled by the defendants JOSEPH GAMBINO and CARLO CONTI.

27. During the month of December, 1976, American Automated, Inc., a licensed private sanitation firm with offices in the Bronx, New York, solicited the business of garbage removal from Harry's Service Station, Inc.



28. From on or about December 1, 1976 up to and including the date of filing of this Indictment, in the Southern District of New York, the defendants JOSEPH GAMBINO and CARLO CONTI, unlawfully, wilfully and knowingly did obstruct, delay and affect, and attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, to wit, the movement of waste, rubbish and garbage from the State of New York to the State of New Jersey, in connection with the business of American Automated, Inc., and American Automated, Inc.'s doing business and providing garbage removal to Harry's Service Station, Inc., by means of extortion, that is the obtaining of property by wrongful use of actual and threatened force, violence and fear in that the defendants JOSEPH GAMBINO and CARLO CONTI did assault and threaten to kill persons associated with American Automated, Inc., in order to force American Automated, Inc. to cease doing business with Harry's Service Station, Inc., as set forth in paragraph 17(1) of Count One of this Indictment.

(Title 18, United States Code, Sections 1951 and 2)

COUNTS SIX THROUGH ELEVEN

The Grand Jury further charges:

29. On or about the 15th day of April following each of the years enumerated below in Counts Six through Eleven, in the Southern District of New York, the defendant JOSEPH GAMBINO, who during the calendar years set forth below was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar years set forth below by preparing and causing to be prepared, by signing and causing to be signed, and by filing and causing to be filed with the Internal Revenue Service, false and fraudulent joint income



tax returns, wherein it was stated that the taxable income and tax due of the defendant and his wife for said calendar years were the sums set forth below as "taxable income per return" and "tax due per return," respectively, when as the defendant then and there well knew his taxable income and that of his wife and tax due were the approximate amounts set forth below as "corrected taxable income" and "corrected tax due," respectively:

| <u>COUNT</u> | <u>CALENDAR<br/>YEAR<br/>ENDING</u> | <u>TAXABLE<br/>INCOME<br/>PER RETURN</u> | <u>TAX DUE<br/>PER RETURN</u> | <u>CORRECTED<br/>TAXABLE<br/>INCOME</u> | <u>CORRECTED<br/>TAX DUE</u> |
|--------------|-------------------------------------|------------------------------------------|-------------------------------|-----------------------------------------|------------------------------|
| 6            | 1970                                | 10,809.23                                | 2,048.03                      | 46,085.08                               | 11,340.09                    |
| 7            | 1971                                | 19,026.45                                | 4,107.41                      | 58,956.87                               | 18,409.77                    |
| 8            | 1972                                | 20,909.19                                | 4,670.94                      | 79,959.19                               | 31,571.69                    |
| 9            | 1973                                | 22,724.83                                | 4,595.95                      | 105,174.83                              | 46,720.57                    |
| 10           | 1974                                | 18,261.06                                | 3,893.10                      | 90,761.06                               | 39,636.64                    |
| 11           | 1975                                | 6,999.00                                 | 1,100.00                      | 50,999.00                               | 17,469.50                    |

(Title 26, United States Code, Section 7201).

COUNTS TWELVE THROUGH SIXTEEN

The Grand Jury further charges:

30. On or about the 15th day of April following each of the years enumerated below in Counts Twelve through Sixteen, in the Southern District of New York, the defendant JOSEPH GAMBINO, a resident of the Bronx, New York, who during the calendar years set forth below was married, unlawfully, wilfully and knowingly did make and subscribe and cause to be made and subscribed, United States Joint Income Tax Returns, Form 1040, on behalf of himself and his wife, which tax returns were verified by written declarations that they were made under penalties of perjury, and were filed with the United States Department of Treasury, Internal Revenue Service, and



which tax returns the defendant did not believe to be true and correct as to every material matter, in that the said defendant falsely stated therein that his joint gross income and that of his wife was the amount set forth below as "gross income per return,"

whereas, in truth and in fact, as the said defendant then and there well knew, his joint gross income and that of his wife was the approximate amount set forth below as "corrected gross income:"

| <u>COUNT</u> | <u>CALENDAR<br/>YEAR ENDING</u> | <u>GROSS INCOME<br/>PER RETURN</u> | <u>CORRECTED<br/>GROSS INCOME</u> |
|--------------|---------------------------------|------------------------------------|-----------------------------------|
| 12           | 1970                            | 13,059.23                          | 48,335.03                         |
| 13           | 1972                            | 24,860.57                          | 83,910.57                         |
| 14           | 1973                            | 26,027.67                          | 108,477.67                        |
| 15           | 1974                            | 24,560.88                          | 97,050.88                         |
| 16           | 1975                            | 16,861.07                          | 60,861.07                         |

(Title 26, United States Code, Section 7206(1)).

COUNTS SEVENTEEN THROUGH TWENTY-TWO

The Grand Jury further charges:

31. In or about the years enumerated below in Counts Seventeen through Twenty-two, in the Southern District of New York, the defendant CARLO CORTI, unlawfully, willfully and knowingly did aid, abet, counsel, command, induce and procure Joseph Gambino in the commission of offenses against the United States, to wit: the attempt to evade and defeat a large part of the income tax due and owing by the said Joseph Gambino and his wife for the calendar years set forth in Counts Six through Eleven of this Indictment.

| <u>COUNT</u> | <u>CALENDAR YEAR</u> |
|--------------|----------------------|
| 17           | 1970                 |
| 18           | 1971                 |
| 19           | 1972                 |
| 20           | 1973                 |
| 21           | 1974                 |
| 22           | 1975                 |

(Title 18, United States Code, Section 2).

FOREMAN

ROBERT B. FISKE, JR.  
United States Attorney



1     1h                   (Afternoon session; in open court.)     3021

2                   THE CLERK: The Court is about to render its  
3 verdict. Anyone wishing to leave the courtroom will do so  
4 now or remain seated until the proceedings are concluded.

5                   THE COURT: Good afternoon, everyone. These are  
6 the findings of fact of the Court:

7                   In late 1968 Joseph Gambino and Carlo Conti pur-  
8 chased certain equipment from James Plastina, and shortly  
9 thereafter formed Columbus Lease Corporation with Mr. Gambino  
10 as President and two-thirds stockholder and Mr. Conti as  
11 Secretary-Treasurer and one-third stockholder.

12                   Columbus Lease Corporation continued Mr. Plastina's  
13 waste removal operations under an agreement with the City of  
14 Mount Vernon until the agreement terminated in late 1969. At  
15 about this time Yellow Bird Carting, Inc. was organized with  
16 Mr. Conti as President.

17                   In late 1969 or early 1970 Yellow Bird began  
18 picking up refuse from Riverview Cooperative (the "Co-op  
19 Supermarket"), a supermarket which was then in a temporary  
20 location in the then new Co-op City. This followed an inci-  
21 dent at the Co-op Supermarket during which Mr. Conti assaulted  
22 Louis Mongelli with a lead pipe. Following the assault, Mr.  
23 Conti said, "The next time I will split your head open." Mr.  
24 Conti then said that he was taking over the garbage collection  
25 at the supermarket.

After this incident, Yellow Bird, and later

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2 Terminal, and finally P & S Sanitation, collected the garbage  
3 from the Co-op Supermarket. Up to the present time, Mr.  
4 Conti, now through P & S Sanitation, continues to pick up  
5 garbage from the supermarket.

6 A customer for garbage collection is known in the  
7 industry as a "stop." In June, 1970, in an apparent effort  
8 to get a sufficient number of stops to qualify for a New York  
9 City carting license, Yellow Bird Carting, Inc. entered into  
10 an agreement to purchase certain stops from Terminal Sanita-  
11 tion, which was then a partnership and was run by Peter  
12 Darminio and his brother Anthony Darminio. However, Yellow  
13 Bird Carting, Inc. was refused a license by the Department of  
14 Consumer Affairs of the City of New York.

15 Mr. Gambino then spoke with Peter Darminio of  
16 Terminal Sanitation and requested that Mr. Darminio's firm  
17 pick up the stops which were being serviced by Yellow Bird  
18 Carting, Inc. Mr. Gambino reached an agreement with Peter  
19 Darminio under which Gambino was to receive one-third of the in-  
20 come from these stops, as well as one-third of the income  
21 from any other stops which he (Gambino) would thereafter  
22 bring to Terminal.

23 In April, 1971 a contract was entered into between  
24 Terminal and Yellow Bird Carting, Inc. which provided that  
25 Terminal would purchase Yellow Bird's stops, including the



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1 Co-op Supermarket, which by this time was in a permanent  
2 location at 111 Dreiser Loop. According to the contract,  
3 the purchase price was to consist of a \$5,000 down payment  
4 to be paid in two installments plus \$800 per month. Although  
5 the contract provides for 28 of these monthly payments and  
6 \$852 for the 29th month, arithmetic calculations indicate  
7 that it should have read 38 months and 39th month, because  
8 the total listed on the contract is the result of multiplying  
9 the figures which I have just set forth.

11 Upon entering into this contract, Peter  
12 Darminio began making monthly payments to Mr. Gambino. At  
13 the beginning, \$800 a month was paid by check and additional  
14 amounts to make up the aforementioned one-third were paid in  
15 cash. Later the entire sum was paid by Mr. Darminio in cash.  
16 Initially the cash was paid to Mr. Gambino. Subsequently,  
17 the cash was paid to Mr. Conti.

18 Mr. Conti, who had formerly been president of  
19 Yellow Bird, became an employee of Terminal and serviced the  
20 now Terminal stops in Co-op City with Ralph Torres.

21 Shortly after Mr. Torres began working the  
22 Co-op City route, Mr. Gambino asked him how he liked his,  
23 (Mr. Gambino's) Co-op City route.

24 In this case, where the testimony ranged from  
25 credible to incredible, the Court found Mr. Torres a credible

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2        witness.

3                    Peter Darminio,        one of the two owners of  
4        Terminal Sanitation, was a gambler, and in the early 1970's  
5        was arrested on narcotics charges. He was subsequently  
6        indicted in Rockland County. His brother, Anthony Darminio,  
7        was a user of narcotics. As a result of these various  
8        activities, the Darminios were constantly short of money.  
9        Between them they borrowed money from Joseph Gambino during  
10       1970 and 1971 until they had borrowed an aggregate of \$90,000  
11       from Mr. Gambino.

12                   This indebtedness is reflected on an exhibit  
13       in evidence which bears Mr. Gambino's handwriting, is headed  
14       with the word "Peter" and contains a column of figures and  
15       certain calculations. The numbers are in Mr. Gambino's  
16       handwriting. Other information specifying the nature of the  
17       respective loans is in the handwriting of Peter Darminio.

18                   In 1971, in order to repay the outstanding  
19       loans, Peter Darminio was forced by Mr. Gambino to sell a  
20       lucrative stop, a Pathmark Supermarket. The stop was sold to  
21       Palompelli Carting Company and the Darminios' loans were  
22       repaid from the proceeds of the sale.

23                   The Court finds that the funds which were ad-  
24       vanced by Mr. Gambino in 1970 and 1971 were repaid without  
25       interest by Peter Darminio following threats by Mr. Gambino



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2 to Mr. Darminio.

3 During the period 1972 through 1975, Peter  
4 Darminio was frequently in arrears in connection with the  
5 payment of various debts, including the aforementioned one-  
6 third payments. When Mr. Darminio was late in making payments,  
7 Mr. Conti, who at that point was collecting the payments for  
8 Mr. Gambino, threatened him and beat him from time to time.

9 In early 1972 Mr. Gambino formed the Blue Grass  
10 Carting Company, and on February 26, 1972 entered into a  
11 contract purporting to purchase from Terminal Co-op City 30  
12 stops, including the Co-op Supermarket at 111 Dreiser Loop.  
13 These 30 stops included most of the stops set forth in the  
14 April, 1971 contract between Terminal and Yellow Bird as well  
15 as additional stops in Co-op City, which was then in the  
16 process of being occupied by tenants.

17 In connection with this Terminal-Blue Grass con-  
18 tract, which was signed by Mr. Gambino, Mr. Gambino gave  
19 Peter Darminio a deposit in the form of a check for \$7,000.  
20 When Mr. Gambino was unable to obtain a license from the City  
21 of New York, the agreement was cancelled and the deposit  
22 returned.

23 Peter Darminio continued to require money to  
24 cover expenses which he had incurred, and in August or  
25 September, 1972 borrowed the sum of \$75,000 from Mr. Gambino.

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2        He repaid this loan at the rate of \$1,250 per month, which  
3        included \$1,000 in repayment of principal and interest, and  
4        \$250 described by the witness as "vigorish." When he was  
5        slow in making these payments, he was threatened by Mr.  
6        Gambino and was threatened and beaten by Mr. Conti.

7                    In April, 1973 another contract was entered  
8        into by Terminal, this time with Country Club Carting, a  
9        newly formed company which was to be operated by Mrs.  
10       Rosalie Gambino and her father, Nicholas R. Lentini, who up  
11       to that time had owned a beauty parlor and operated a pizza  
12       restaurant. The schedule of stops was identical to the  
13       schedule in the earlier Blue Grass contract.

14                   Mrs. Gambino gave a \$12,000 deposit. However,  
15       the City of New York again refused to issue the appropriate  
16       license, and this contract was also cancelled.

17                   In July, 1973 Bernard Ettinger, who had sold  
18       Terminal to the Darminios in 1968 and who had not been paid  
19       in full in connection with the sale, made a complaint in  
20       writing to the New York City Department of Consumer Affairs,  
21       requesting that the Department see to it that the Darminios  
22       fulfilled their obligations to him before the Department ap-  
23       proved any sale of stops registered to Terminal.

24                   Shortly thereafter, Mr. Conti visited Mr.  
25       Ettinger at the latter's office in The Bronx. Mr. Conti



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1 walked into the office, closed the door behind him, came  
2 over to the left side of Mr. Ettinger's desk, slapped Mr.  
3 Ettinger on the face and proceeded to tell him that it would  
4 be better not to complain to the Department of Consumer  
5 Affairs.  
6

7 The Court notes that on an earlier occasion  
8 when Mr. Ettinger had threatened to foreclose on Anthony  
9 Darminio's home, Mr. Darminio and his wife went to see Mr.  
10 Gambino to seek his help in averting a foreclosure. Mr.  
11 Gambino said at that time, "Don't worry about it; I'll send  
12 Carlo Conti to straighten it out."

13 Moving ahead, we come to a point in 1974  
14 when Mr. Ettinger pressed Peter Darminio for payment of the  
15 balance which was due on the 1968 sale. According to Mr.  
16 Ettinger, the balance then due was \$90,000. However, Mr.  
17 Ettinger indicated that he was willing to settle for sub-  
18 stantially less if he could be paid promptly. Mr. Darminio  
19 indicated that he would sell some stops.

20 Shortly thereafter, Mr. Darminio came to  
21 Mr. Ettinger's office, accompanied by Joseph Perillo, who  
22 said that he was prepared to purchase some stops from  
23 Terminal. Also present was Joseph Gambino.

24 During the course of the meeting Mr. Gambino  
25 indicated that if Mr. Ettinger would settle and take less



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there would be some stops left over for Peter Darminio to continue his route and be able to make a living. The stops which Mr. Perillo was going to buy were outside Co-op City.

Mr. Ettinger agreed to settle for \$40,000, but insisted on a down payment that day. Mr. Perillo stated that he did not have any money with him. Mr. Gambino thereupon gave Mr. Perillo \$5,000 which Mr. Perillo in turn gave to Mr. Ettinger.

The Court found Mr. Ettinger to be a highly credible witness.

In March, 1974, when Peter Darminio had reduced the balance of the \$75,000 Gambino loan to \$45,000, and when Mr. Gambino was preparing to open a new restaurant, Mr. Gambino demanded the entire unpaid balance. Mr. Darminio borrowed the money from one Daniel Hogan, who as identified as a "loanshark," and thereafter delivered the money to Mr. Conti's home.

During the remainder of 1974 and 1975 Terminal's business continued to decline due to the sale of stops.

In November, 1975 a contract was entered into between Terminal and P & S Sanitation, a newly organized company in which Mr. Conti's brother-in-law, Anthony Sepe, was listed as President. Mr. Sepe, a hairdresser, served as a front in this company until he stepped aside for Mr. Conti



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2 in 1976. Mr. Conti is ostensibly the head of the company  
3 at this time.

4 Pursuant to this contract of November, 1975,  
5 P & S Sanitation acquired Terminal's Co-op City stops, and  
6 Peter Darminio went to work for P & S Sanitation, servicing  
7 the same Co-op City stops which Terminal had previously ser-  
8 viced, including Harry's Service Station at 1000 Baychester  
9 Avenue and the aforementioned Co-op Supermarket at 111  
10 Dreiser Loop.

11 Mr. Gambino was active in P & S Sanitation.  
12 P & S rented space from a firm controlled by Mr. Gambino and  
13 stored its books and records in that space. In addition,  
14 when P & S's bookkeeper broke her arm, Mr. Gambino assisted  
15 in writing checks and was on the payroll for five weeks  
16 immediately preceding the filing of the indictment in this  
17 case.

18 The Court finds that Mr. Gambino and Mr. Conti  
19 controlled P & S Sanitation from its inception and used P & S  
20 to take over the remainder of Terminal's business.

21 In the fall of 1976 the Federal Bureau of Inves-  
22 tigation incorporated American Automated Refuse and Waste  
23 Removal, Inc. and set up an office at 80 Westchester Square,  
24 Bronx, New York, within the Southern District of New York.

25 The Court would also take note that Co-op City is



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2 located within this District as well.

3 The corporation set up by the government began  
4 acquiring equipment to be used in waste removal, including  
5 trucks from the Army and a winch. The trucks and the winch  
6 were manufactured in states other than New York, and the winch  
7 was shipped from San Antonio, Texas to New York in late 1976.

8 The corporation began soliciting garbage  
9 collection accounts.

10 The Court finds that the government was aware  
11 of who was then servicing the accounts it was soliciting, one  
12 of which was Harry's Service Station, which was then being  
13 serviced by P & S Sanitation.

14 On December 1, 1976 Harry's entered into an  
15 agreement with American Automated, the government operated  
16 company, and arrangements were made for American Automated  
17 to drop off a container at Harry's. The container was to be  
18 used to store waste which would then be removed by American  
19 Automated.

20 Within a short time, Mr. Conti telephone American  
21 Automated, and on December 15, 1976 Conti came to the American  
22 Automated office at 80 Westchester Square, Bronx, New York. He  
23 entered and proceeded to threaten to kill the person seated  
24 at the desk, who called himself Wayne Dacon but was in fact  
25 Walter Wayne Orrell, a Special Agent of the FBI. The threat



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2 included a threat to throw the agent from the window. The  
3 conversation was tape recorded and the tape was received in  
4 evidence and heard by the Court.

5 In addition to the aforementioned conversation  
6 and oral threats, there are two points on the tape when  
7 there is the sound of a crash or a crunch. Agent Orrell  
8 testified that on those two occasions he was assaulted by Mr.  
9 Conti's punching him.

10 Mr. Conti indicated that he was not happy with  
11 American Automated's solicitation of Harry's Service Station  
12 and stated, "Anything new that opens up in Co-op City is  
13 mine." He insisted that the container which had been placed  
14 in Co-op City be removed immediately.

15 The tape is incontrovertible.

16 As to the American Automated Count the defendants  
17 assert defenses of contrived jurisdiction, entrapment and no  
18 Hobbs Act jurisdiction due to there being no movement in  
19 interstate commerce. In view of this Court's disposition  
20 of that Count as it relates to Mr. Gambino, these defenses  
21 will be discussed only in relation to Mr. Conti.

22 The Court holds that the requirements of the  
23 Hobbs Act, 18 U.S.C. § 1951, with regard to movement in or  
24 affect on interstate commerce have been fulfilled by the  
25 government's proof, including the purchase of equipment



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2 which was manufactured and shipped in interstate commerce.

3 On the issue of entrapment, the Court finds  
4 that the encounter was initiated by Mr. Conti, who first  
5 called American Automated and thereafter came to the  
6 premises of American Automated. In addition, toward the  
7 end of the taped conversation Mr. Conti gave Agent Orrell  
8 a piece of paper with the number "654-1372 Carlo" on it.  
9 This piece of paper is in evidence, and the Court regards  
10 it as Mr. Conti's way of saying, "To reach me, call this  
11 number."

12 In view of the background set forth in this  
13 decision and the specific facts related herein, the Court  
14 rejects the defendant's defense of entrapment.

15 The issue of contrived jurisdiction presents  
16 a closer question. The defendant relies upon the case  
17 of United States v. Archer, 486 F. 2d 670 (2d Cir., 1973).  
18 In that case the defendants were convicted in this Court  
19 of using telephone facilities in interstate and foreign  
20 commerce, of bribery and of conspiring to commit the same  
21 offenses. They appealed.

22 The Court of Appeals in reversing the convictions  
23 with instructions to dismiss the indictment held that the  
24 evidence was insufficient to transform certain telephone  
25 calls made by the defendants pursuant to a federally provoked



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incident of local corruption into a crime against the United States.

The Court finds the instant case factually distinguishable from Archer. The government had a right to establish this lawful enterprise and in connection therewith to solicit persons who might become customers. The defendant Conti chose to react as he did and must face the consequences of his acts. Therefore, the Court rejects the defense of contrived jurisdiction.

The Court concludes that as to the defendant Joseph Gambino the government has proven each element of the following counts beyond a reasonable doubt and therefore finds the defendant Joseph Gambino guilty on the following: Count 1, Count 2, Count 3, Count 4, Count 6, Count 7, Count 8, Count 9 and Count 11.

The Court finds the defendant Joseph Gambino not guilty on Count 5, Count 10 and Count 15, and concludes that it is unnecessary to reach Count 12, Count 13, Count 14 and Count 16 as they are lesser included offenses. See United States v. Terrell, 390 F. Supp. 371 (S.D.N.Y. 1975).

The Court concludes that as to the defendant Carlo Conti the government has proven each of the elements of the following count: beyond a reasonable doubt and therefore finds the defendant Carlo Conti guilty on the



Excerpts from Sentencing Minutes  
July 21, 1977

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THE COURT: Good morning everyone.

Miss Kruger, will you call the matter we set  
down for 9:30.

THE CLERK: United States of America vs.  
Joseph Gambino and Carlo Conti.

MR. COHN: Defendants are ready.

MR. SUDLER: Government is ready.

THE COURT: We will begin first with the  
motions which are before the Court.

I have received and have read the motions  
on behalf of the defendants, which, in essence, seek to  
set aside the verdicts of guilty and to enter judgments of  
acquittal for the defendants, and also the motion which is  
particularly addressed to Count 5 and is addressed to the  
conviction of Mr. Conti on the grounds of lack of jurisdic-  
tion.

I have considered the moving papers. I have  
also considered the government's memorandum. I am prepared  
to rule on the matter. However, if counsel wish to be  
heard, I am prepared to hear them.

MR. COHN: No.

MR. ROSEN: No.

THE COURT: Mr. Sudler, do you wish to be  
heard?



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2 MR. SUDLER: No, your Honor.

3 THE COURT: I have considered the motions and  
4 I have put aside for the purpose of my considering the  
5 motions the government's legal point that a Rule 29 motion  
6 for a judgment of acquittal is not proper following a bench  
7 trial. Because I recognize the importance of the case to  
8 the defendants, as well as to the government, I have con-  
9 sidered the proof as it was presented during the several  
10 weeks of trial. I have concluded with reference to the  
11 motion to set aside my verdict that it comes down to a  
12 question of credibility.

13 I was the trier of the facts, and after having  
14 listened to various witnesses, I chose to believe the testi-  
15 mony of certain witnesses.

16 I will focus for the moment on the testimony  
17 of Ralph Torres, because I believe that the accepting by  
18 the Court of the testimony of Mr. Torres makes up a prima  
19 facie case with reference to both defendants, save for the  
20 conviction of Mr on Count 5. Mr. Torres' testimony  
21 corroborated the testimony of the Darminios. I would  
22 suggest that without corroboration I was not prepared to  
23 believe the oral testimony of both of the Darminios as  
24 proving the government's case beyond a reasonable doubt.

25 However, there was, in my judgment, corrobora-



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2 tion. I gave you the example of Ralph Torres,

3 There was some documentary proof. I found  
4 the single sheet of paper containing the list of numbers,  
5 which was concededly in Mr. Gambino's handwriting to be  
6 corroborative of the fact that Gambino had made loans to  
7 the Darminos over a period of time, and thus I found that  
8 to be supportive of the testimony of the Darminos and the  
9 government's remaining case as it related to the tax charges.

10 Accordingly, because I concluded that this  
11 came down to a question of credibility, I have determined  
12 to deny the motion to set aside judgment of conviction for  
13 Mr. Gambino on Counts 1 through 4, 6 through 9 and 11; as  
14 to Mr. Conti, on Counts 1 through 4.

15 With reference to the application directed  
16 to Count 5, as you all know, that was a matter which was  
17 considered at some length during the course of the trial.  
18 I indicated as the evidence was presented that I had finally  
19 arrived at a view that the interstate aspect of the matter  
20 was sufficiently proved and that there was no valid defense  
21 on the ground of contrived jurisdiction, or going back to  
22 the matter of interstate commerce, on the basis of no  
23 jurisdiction. I found the case distinguishable from the  
24 Archer case, which struck me as being a contrived prosecution  
25 so far as the federal government is concerned. Here I think



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1 the government had a right in the enforcement of the laws,  
2 having learned of certain activities in the cartage industry,  
3 to set up and establish what appeared to be a private cart-  
4 ing company and then to sit back and wait.

5  
6 My view of the evidence is that once the  
7 government put out what might be called the bait, unfortun-  
8 ately, Mr. Conti learning of the government's acquiring the  
9 account of Harry's Service Station, came on his own to  
10 the Westchester Square office, and thereafter, of course,  
11 we have the tape. He made certain statements which in this  
12 Court's view are proscribed under the Hobbs Act.

13 I know the key to the defendants' argument  
14 here was jurisdiction, since the tape spoke for itself.  
15 I found, and I would reaffirm my finding, that, first, there  
16 was interstate commerce sufficient for this Court to have  
17 jurisdiction for violation of the Hobbs Act; secondly, that  
18 there was no contrived jurisdiction; and, third, that the  
19 defense in connection with that matter failed to present  
20 sufficient proof for the Court to find entrapment.

21 Accordingly, the Rule 34 motion, as well as  
22 the Rule 29 motion are denied. I will endorse the motion  
23 papers.

24 I turn now to the matter of sentencing. The  
Court notes that both defendants are present, as well as



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2 their attorneys, Mr. Cohn and Mr. Rosen. I would first in-  
3 quire if there is any reason you know of, Mr. Cohn and  
4 Mr. Rosen, why sentence should not be imposed at this time?

5 MR. ROSEN: No, your Honor.

6 MR. COHN: No, your Honor.

7 THE COURT: I would ask first, Mr. Gambino  
8 and Mr. Conti, if there is any reason why sentence should  
9 not be imposed at this time?

10 DEFENDANT GAMBINO: No.

11 DEFENDANT CONTI: No, your Honor.

12 THE COURT: I would think, unless you wish  
13 to proceed in a different order, that we will take  
14 Mr. Gambino's case first and then Mr. Conti's. I would ask  
15 defense counsel, first Mr. Cohn, and then later on hear from  
16 Mr. Rosen, if there is anything you wish to say in  
17 Mr. Gambino's behalf, or any information he wishes to present  
18 in mitigation of punishment.

19 Before I hear from Mr. Cohn, I would like the  
20 record to reflect that I have received and have viewed the  
21 presentence report prepared by the Probation Department.  
22 I note that the presentence report was seen first by defense  
23 counsel, and then subsequently by the United States Attorney.  
24 In addition, I have received and have read a substantial  
25 number of letters, together with a cover letter which was



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2 delivered to my chambers two days ago in connection with  
3 Mr. Gambino. Mr. Cohn has set forth very fully in this  
4 letter what he believes is the proper perspective of this  
5 case and he has made certain comments and suggestions on  
6 the third page with reference to an appropriate sentence.

7 In addition, the Court has reviewed and read  
8 all of the numerous letters from family and friends and  
9 persons who have business dealings with Mr. Gambino.

10 Mr. Cohn, with that background, I will ask  
11 if there are any comments or recommendations that you wish  
12 to make prior to sentence?

13 MR. COHN: May it please your Honor, in view  
14 of the very accurate recital you made as to the state of  
15 the record, I will be brief. I think it is better to get  
16 these things to your Honor a couple of days in advance.

17 THE COURT: I appreciate that. I had similar  
18 material from Mr. Conti, and I would say at this time I  
19 have read all that material as well. There were very  
20 touching letters from Mr. Conti's sister and his wife.

21 MR. COHN: Thank you, your Honor.

22 In considering sentence I just want to empha-  
23 size the following things which are in the letter insofar  
24 as Mr. Gambino is concerned. I point out to your Honor  
25 that for a period of 10 years the United States has been



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trying to deport Mr. Gambino unsuccessfully. It has met with resistance and there has been a long and expensive litigation. The matter was before the United States Court of Appeals within the last couple of months and there was an agreement to remand and the whole process started all over again. And when your Honor comes to impose sentence in this case, I raise the question, as I did in my letter, is the public interest better served by spending \$13,000 a year of United States taxpayers' money to keep in prison a man whom the government has been trying for 10 years to get out of the United States and who is now willing in the face of all this to consent to a deportation with agreement never to apply for reentry to the United States?

Living in the United States and being in the United States is an important matter to people, and in the case of Mr. Gambino, for example, he has resisted with every fiber of his being for a period of 10 years attempts to remove him from this country, which has come to mean so much to him and where he has a wife and children and family. And to give that up and the serving of notice to the people that that is a consequence is perhaps much more devastating than a prison term from the standpoint of deterrence and certainly from the standpoint of the United States as being a much more sensible and meaningful solution.



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2 And I say that, your Honor, in the face of the President's  
3 support in this morning's papers of legislation which would  
4 give, in effect, amnesty insofar as deportation from the  
5 United States to people who have been here for a certain  
6 period of time, even though they arrived, as the government  
7 contends that Mr. Gambino did, illegally.

8 So from a sentencing standpoint, though I  
9 realize under the guidelines we don't have it in this  
10 District, we have had little experience over in New Jersey,  
11 and the best we can make out, the guidelines in a case like  
12 this for someone in Mr. Gambino's category would come to  
13 a 24 or 36-month proposition, we are saying that the  
14 expenditure of taxpayers' money in the face of an agreement  
15 now for the first time to do what the government has been  
16 trying to do for 10 years is worthy of the utmost consider-  
17 ation by your Honor.

18 One other thing. Although your Honor was kind  
19 enough to say he would not have accepted the testimony of  
20 the Darminios alone, I do want to point out that you gave  
21 heavy consideration to the testimony of Peter and Anthony  
22 Darminio. Peter is a compulsive gambler, and Anthony is a  
23 convicted drug user. After Peter Darminio supposedly  
24 reformed, he went and beat up a lady while in the witness  
25 protection program. Now, the question is, what



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2 does that have to do with Joseph Gambino? I recall the  
3 words of Judge Wyatt in the Varano case. In imposing  
4 sentence he said, "I can't be blind to the fact that the  
5 accuser here and the government witness here was himself  
6 treated in a most lenient fashion, and  
7 that is something that must bear upon even-handed justice  
8 when I am asked to impose a sentence against those whom  
9 the testimony has been given."

10 That is what I am coming to, my final point,  
11 what was not in my letter, an information that has just  
12 come to me through the fairness of Mr. Sudler, the fact  
13 that Peter Darminio has now been sentenced and is not paying  
14 a penny in income taxes for a period of some eight or nine  
15 years, despite a conceded income of hundreds of thousands  
16 of dollars, not even having filed a return, Peter Darminio  
17 has just received a sentence of probation without one day  
18 in jail.

19 So, I would respectfully submit to your Honor  
20 as a factor in even-handed justice here, the fact that  
21 Mr. Darminio, unlike Mr. Gambino, who has filed a  
22 return every single year in dispute in this case, the accuser  
23 here did not even go to the trouble of filing a return and  
24 kept all of his ill-gotten gains, marches out without ever  
25 having served a day in jail and with the receipt of a



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2 subsidy from the United States Government.

3 I would respectfully submit to your Honor all  
4 of those factors, plus the testaments which your Honor has  
5 referred to. I commend all of these things to your Honor  
6 for your Honor's very soul-searching and careful considera-  
7 tion in the case before you.

8 THE COURT: Thank you, Mr. Cohn.

9 At this time I would ask Mr. Gambino if there  
10 is anything he wishes to say in his own behalf, or any  
11 other information he wishes to present to the Court in  
12 mitigation of punishment.

13 DEFENDANT GAMBINO: No, your Honor.

14 THE COURT: I will ask the Assistant United  
15 States Attorney, Mr. Sudler, if he has any comments or  
16 recommendations which he wishes to make prior to sentence?

17 MR. SUDLER: Yes, I do, your Honor.

18 Your Honor, throughout the course of this  
19 trial Mr. Cohn has attempted to reduce this entire matter  
20 to a dispute between Mr. Gambino and the Darminios. That  
21 is not what this case is about. Mr. Darminio was a vehicle  
22 and only that to prove the guilt of the defendant Joseph  
23 Gambino, who now awaits sentencing.

24 In a rather very real sense, this was an  
25 unusual case for the government to present to a Court in



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2 that it involves someone like Mr. Darminio, who himself  
3 was guilty of criminal acts, because we rarely get a witness  
4 like that, your Honor. We rarely get one who will testify  
5 in a case such as this. To take Mr. Darminio and to compare  
6 him, however, to Mr. Gambino isn't the issue that is before  
7 your Honor. The issue before your Honor concerns  
8 Mr. Gambino, who came to this country illegally, and we  
9 will not fault him for that, because many people have come  
10 illegally to this country.

11 But, the issue is that Mr. Gambino came to  
12 this country and entered into a concerted pattern of illegal  
13 activity over a course of years. Apparently, it was not  
14 enough for him to simply come here to take advantage of  
15 this country's opportunities, to become a prosperous business-  
16 man. Instead, Mr. Gambino became a member of organized  
17 crime.

18 Now, Congress in enacting the statute that  
19 Mr. Gambino was convicted under was responding to a need  
20 created by the ever increasing presence of organized crime  
21 within our economic system. In its statements of findings  
22 and purpose regarding the bill, Congress found that organized  
23 crime in the United States is a highly sophisticated,  
24 diversified, and widespread activity that annually drains  
25 billions of dollars from America's economy by unlawful



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1           conduct and the illegal use of force, fear and corruption;  
2           that organized crime derives a major portion of its power  
3           through loansharking; that this power and money are in-  
4           creasingly used to infiltrate and corrupt legitimate  
5           businesses; that organized crime activities in the United  
6           States weaken the stability of the economic system, harm  
7           innocent investors and competing organizations, interfere  
8           with free competition, and seriously burden interstate and  
9           foreign commerce; further, Congress found that organized  
10          crime continues to grow because the sanctions and remedies  
11          available to the government are unnecessarily limited in  
12          scope and impact.

13  
14                 The statute under which these defendants were  
15          convicted, your Honor, was in response to those congressional  
16          findings that I have just read. Congress made plain its  
17          views with regard to organized crime and how it should be  
18          dealt with. That is why these statutes under which the  
19          defendant Gambino was convicted obtain a maximum term of  
20          imprisonment, 20 years.

21                 Nothing in the federal code, your Honor, with  
22          the possible exception of civil rights violations, the  
23          taking of a life, kidnapping, bear such a serious penalty.

24                 Now, your Honor, Mr. Cohn got up here and he  
25          got on the same old refrain that he has been singing



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2       throughout the course of this prosecution, and that is that  
3       the government has been trying to deport the defendant  
4       Gambino for 10 years. Now he agrees to go. Well, of course,  
5       he agrees to go, your Honor, because he has been caught,  
6       and he has been caught good. And what was he caught doing?  
7       Was this the one single criminal act, a single transaction  
8       or something like that? No, this was a course of criminal  
9       conduct over a period of 10 years which involved not a  
10      single crime, but involved a series of crimes, the control  
11      of an industry, your Honor, in the Bronx, income tax evasion  
12      in enormous amounts over a period of years.

13               Now, to sit here and liken these crimes to  
14      something like Peter Darminio did and to say the remedy is  
15      a voluntary departure is what is called for here is simply  
16      ridiculous. It is an affront. What is called for here,  
17      your Honor, is the imposition of a stiff jail sentence, and  
18      it is called for not to rehabilitate this defendant, be-  
19      cause Mr. Gambino cannot be rehabilitated in a thousand  
20      years, I respectfully submit to the Court.

21               What is called for here is a stiff jail  
22      sentence to say to the next Joseph Gambino who comes along  
23      in the Bronx that this is what you can expect for this type  
24      of activity and this is what is going to happen when you  
25      get convicted of crimes like this. That is the purpose to



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2 be served here today, your Honor.

3 I hope, your Honor, sincerely, that the Court  
4 in imposing sentence on this defendant is going to announce  
5 to our city and to our society that there is a penalty to be  
6 paid for this type of action and the penalty is going to be  
7 a severe jail sentence, and we are not going to hear about  
8 deportation, so that Mr. Gambino can go off and live in  
9 some villa in Italy. That is not an appropriate penalty  
10 for the actions that he has been convicted of. The appro-  
11 priate penalty is a lot of years in jail, so that others  
12 like him, at least, will think before they do something like  
13 that.

14 THE COURT: Thank you, Mr. Sudler. The Court  
15 is prepared to impose sentence.

16 I have before me a defendant, age 47, married,  
17 who has been convicted on nine counts of charges, including  
18 racketeering, extortion, and loansharking in the private  
19 sanitation industry, and a failure to report a substantial  
20 amount of income received over the period 1970 through 1973  
21 and 1975.

R2 22 The Court presided at the trial and was  
23 persuaded by the government's case that the charges had  
24 been proved beyond a reasonable doubt. The charges are  
25 serious. The penalties of law are substantial.



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For example, on Counts 2, 3 and 4, Congress has seen fit to impose a maximum penalty on each count of 20 years in prison.

The defendant does not have any substantial criminal record here in the United States. His only other arrest prior to this one came in 1972, when he was indicted for falsely misrepresenting himself as a citizen of the United States. He was placed on probation and paid a \$750 fine.

Counsel has already noted to the Court that the defendant has been fighting the Immigration & Naturalization Service's efforts to have him deported. The present posture of that matter is that the case is on appeal in the United States Court of Appeals for the Second Circuit.

The defendant came here as an illegal alien after some early years in Sicily where he lived under poor economic circumstances, apparently, with his family. He came here illegally. He had some difficulty in Italy, apparently. He has been here approximately 20 years and appears in his early years certainly to have worked hard, first as a laborer, and later in the garbage removal business. He has also been involved in the restaurant business and appears to have been financially successful.

Unfortunately, the Court has found that he has



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2 not reported all of his income from his various enterprises,  
3 both legal and illegal and has, as the Court found, evaded  
4 substantial amounts of federal income taxes over a sub-  
5 stantial period of time. The Court has concluded that a  
6 substantial period of confinement is needed in this case  
7 as a deterrent, not only to Mr. Gambino, but also to others  
8 who either are or would hope to follow the same path.

9 The Court has heard comment from counsel that  
10 it would be better for him to leave the country than to go  
11 to prison. But having entered this country illegally on one  
12 occasion, I suggest there is no assurance he would not  
13 attempt to do so again. I recognize that it will cost the  
14 taxpayers a substantial sum of money to maintain Mr. Gambino  
15 in federal prison. However, I also recognize that substan-  
16 tial funds have been expended in connection, for example,  
17 with this prosecution. I also would suggest that a period  
18 of confinement does not render the deportation proceedings  
19 moot. It may well be that after a certain period of time,  
20 subject, of course, to the discretion of the United States  
21 Parole Board, he might be paroled and there be a voluntary  
22 departure. But I have determined to leave that matter to  
23 the Parole Board and the Immigration Service.

24 I suggest that the primary reason for the  
25 sentence which I am about to impose is that it should serve



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1 as a deterrent to others not to follow this pattern. This  
2 is a Land of Opportunity for those who are willing to  
3 pursue their business enterprises in lawful fashion. The  
4 opportunity is almost unlimited. But for those who attempt  
5 to proceed by illegal means, I suggest that justice can mean  
6 only one thing, that a violation of the law if proved must  
7 be punished.  
8

9 I suggest that the testimony of the Darminios,  
10 which was heard by the Court, has a certain amount of merit.  
11 I will say that Mr. Darminio was not before me for sentence.

12 More important to this Court, is the fact  
13 that the public has been victimized by this activity. As  
14 I see it, the public has no choice with reference to who  
15 they do business with in the garbage business in the Co-op  
16 City area, and if they don't pay the charges which are  
17 levied, they don't have their garbage picked up. That is  
18 what I heard at the trial and that is what I believe to be  
19 the case.

20 I do not pretend to think that the sentence  
21 that I impose here today will change the situation radically,  
22 but I would hope that the sentence which I impose here today  
23 will be of some assistance, so that the public can get a  
24 fair break and not be victimized, as I believe it has been,  
25 up to now in what appears to be a closed industry.



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1  
2 This country grew on free enterprise. To a  
3 certain extent, the sentence here is an endorsement of this  
4 Court of the free enterprise system to which this country  
5 subscribes and on which this country has grown and prospered.

6 This is the sentence of the Court: It is  
7 adjudged that on Count 1 the defendant is hereby committed  
8 to the custody of the Attorney General or his authorized  
9 representative for imprisonment for a term of five years.

10 It is adjudged that on Count 2 the defendant  
11 is here committed to the custody of the Attorney General  
12 or his authorized representative for a term of 10 years.

13 It is adjudged that on Count 3 the defendant  
14 is hereby committed to the custody of the Attorney General  
15 or his authorized representative for imprisonment for a term  
16 of 10 years.

17 It is adjudged that on Count 4 the defendant  
18 is hereby committed to the custody of the Attorney General  
19 or his authorized representative for a period of 10 years,  
20 said sentences on Counts 1, 3 and 4 are to run concurrently  
21 with the sentence on Count 2.

22 With reference to Count 6, it is adjudged  
23 that the defendant pay a fine to the United States in the  
24 sum of \$10,000 and the imposition of sentence as to imprison-  
25 ment only is suspended and the defendant is placed on

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2 probation for a period of 3 years, probation to follow his  
3 period of confinement.

4 In the event the defendant leaves this country,  
5 the period of probation is to be terminated upon his de-  
6 parture.

7 It is adjudged that on Counts 7, 8, 9 and 11  
8 the defendant pay a fine to the United States in the sum  
9 of \$10,000 on each of those four counts, and the imposition  
10 of sentence on each of those four counts as to imprisonment  
11 only is suspended and the defendant is placed on probation  
12 for a period of 3 years under the same terms and conditions  
13 as set forth in connection with his probation on Count 6  
14 and subject to the standing probation order of this Court.

15 The defendant is fined, then, an aggregate  
16 sum of \$50,000. The fine is to be paid within 30 days of  
17 this date or within 30 days of the final determination of  
18 any appeal, whichever is later.

19 That is the sentence of the Court.

20 MR. COHN: Your Honor, the only other matter  
21 I want to relate to the Court, the defendant is filing a  
22 prompt notice of appeal. Following the last proceedings,  
23 your Honor doubled his bail and increased it to \$500,000,  
24 which bail after a period of time was made, due to the  
25 posting of everything his wife and children and everyone.





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**ROBERT B. FISKE JR.**  
**SEP 12 1977**  
**U. S. ATTORNEY**  
**N. D. DIST. OF N. Y.**